IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 723 of 2007.

Date of Decision: 25.6.2007.

H.R.T.C.& anr. … Petitioner.

Versus.

Ranjit Singh …. Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Lalit Sharma, Advocate vice Mr. H.S.Rawat Advocate

For the Respondents: Mr. Aman Sood, Advocate.

Deepak Gupta, ACJ (Oral)

This petition is directed against the award of the Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Kangra at Dharamsala in Reference No. 45 of 2005 decided on 22.9.2006.

The brief facts of the case are that the respondent was engaged as daily rated Clerk in Himachal Road Transport Corporation (for short: HRTC) on 14.5.1996. It is not in dispute that the respondent- workman was initially appointed for a period of 89 days and was re-engaged from time to time till his services were terminated on 1.5.2001. According to the workman, he was disengaged without giving him any show cause notice as provided under Section 25F of the Industrial

Disputes Act nor the retrenchment compensation was paid to him in terms of the said provision.

The case set up by the employer-HRTC before the Industrial Tribunal was that in fact the respondent's employment was need based according to the work available with the HRTC and he was engaged from time to time for 89 days at a time keeping in view the work available in the HRTC.

We have heard Mr. Lalit Sharma, Advocate appearing vice Mr.H.S.Rawat, Advocate counsel for the petitioner-HRTC and Mr. Aman Sood, Advocate, counsel for the respondent-workman.

At the out set, we may point out that it has been repeatedly held by the Apex Court as well as this Court that frictional breaks cannot be taken into account while determining the question whether the services of a workman were engaged only for a fixed term. Admittedly, the workman has worked for almost 5 years. It was for the employer- HRTC to prove whether employment of the workman for 89 days at a time was genuine and the breaks after 89 days were not frictional. The employer-HRTC in this case led no evidence in this behalf. Therefore, the learned Labour Court has rightly held that no material was placed before it to prove that the employment of the workman was only for 89 days. Even otherwise, the employment which continued for almost five years cannot be said to be an employment of 89 days at a time. The length of employment over a period of 5 years itself clearly indicates that substantial work was available with the

employer-HRTC. Admittedly, the workman had completed more than 240 days in each of the preceding five years. Therefore, the services of the workman could not have been dispensed with without following the procedure prescribed under Section 25F of the Industrial Disputes Act. Since this procedure has not been followed, the learned Tribunal was right in holding that the order of termination is illegal. Consequently, we dismiss the writ petition with no order as to costs.

(Deepak Gupta), ACJ

June 25, 2007. (V.K.Ahuja), J.

s.